



Paper No. 9

Shelley P.M. Fussey
WILLIAMS, MORGAN & AMERSON, P.C.
Suite 250
7676 Hillmont
Houston, TX 77040

COPY MAILED

AUG 19 2002

OFFICE OF PETITIONS

In re Application of
Thorpe, et al.
Application No. 09/998,833
Filed: November 30, 2001
Attorney Docket No. 4001.002299

DECISION ON PETITION

This is a decision on the "Response to Notice of Omitted Items and Petition to Maintain Filing Date" filed May 9, 2002, and supplemented with paper filed August 13, 2002, including copy of postcard receipt. This petition is properly treated as a petition under 37 C.F.R. §1.53(e)(2). Petitioners request that the Office accord the above-identified application a filing date of October 30, 2001, with page 154 as a part of the original application disclosure.

Application papers in the above-identified application were filed on November 30, 2001. However, on April 10, 2002, the Initial Patent Examination Division mailed applicants a "Notice to File Missing Parts of Nonprovisional Application." Applicants were thereby notified that the application papers had been accorded a filing date; however, page 154 of the specification appeared to have been omitted.

In response, applicants timely filed the instant petition (and petition fee). Applicants petition to maintain the original filing date on the basis that the allegedly missing page was, in fact, submitted and received by the Office. In support thereof, applicants submitted *inter alia* a copy of their return postcard from the USPTO. Petitioners also submitted a copy of page 154 as originally filed.

A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the Office of all items listed thereon on the date stamped thereon by the Office. See MPEP 503. A review of petitioner's postcard receipt reveals that: 1) it was date stamped as received in the USPTO on November 30, 2001; 2) it specifically identifies the items being filed, including "Specification: 205 pages" and 3) it lacks any annotation of nonreceipt of any item denoted on the postcard. Thus, petitioners have shown that the items denoted, including the 205 pages of specification, were filed on November 30, 2001.

The application papers already considered received in the Office on November 30, 2001, were reviewed along with the missing page of specification submitted on petition. These papers together constitute the items described on the postcard receipt, including specification: 205 pages. Petitioner has shown that pp. 154 was among the items present in the application on the date of deposit and should be included in the original application disclosure.

Accordingly, the petition is GRANTED.

Given the basis for granting the petition, petitioner's request to refund the petition fee is granted. The fee will be credited to Deposit Account No. 50-0786, as authorized.

The application is being forwarded to the Office of Initial Patent Examination (OIPE) for:

- further processing with a filing date of November 30, 2001, using the application papers received in the Office and presently accorded that date; and page 154 of the specification resubmitted on petition filed May 9, 2002;

Applicant will receive appropriate notifications regarding the fees owed, if any, and other information in due course from OIPE.

Telephone inquiries related to this decision should be directed to Petitions Attorney Nancy Johnson at 703-305-0309.

Christina Carter Donnell for

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy